

‘Fair work’ and the modernisation of Australian labour standards: A case of institutional plasticity entrenching deepening wage inequality

(Short title: ‘Fair work’ and the modernisation of Australian labour standards)

John Buchanan, University of Sydney Business School¹

Damian Oliver, University of Technology, Sydney²

Corresponding author:

John Buchanan

john.buchanan@sydney.edu.au

+61 (02) 9351 8151

+61 (0)418 207 945

1. Business Analytics
University of Sydney Business School
Rm 4087 Business School Building (H70)
The University of Sydney NSW 2006
AUSTRALIA
2. Centre for Management and Organisation Studies
UTS Business School
Dr Chau Wing Building
Building 8
14-28 Ultimo Road
University of Technology, Sydney
Ultimo NSW 2007
Australia

Acknowledgement.

This article has benefitted from very helpful comments provided by the Editor and two anonymous referees. The idea for the article and useful comments on an earlier draft were provided by Jacqueline O’Rielly. The paper is part of the ‘Australia at Work’ study supported by the Australian Research Council and Unions NSW as an industry linkage project. The usual disclaimer applies.

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Words: 10,069

Abstract

Australia was long recognised for its relatively compressed wage structure. From the 1940s to the 1970s this was associated with a comprehensive regime of 'award based' minimum wages. Since the 1980s this has been subjected to comprehensive 'modernisation'. After three decades of reform and in the most supportive economic environment in the OECD, Australian wage inequality has deepened. Although multiple political-economic forces have been at play, the evolution of Australia's labour standards regime is an example of 'institutional plasticity' whereby the purpose and operations of wage-setting institutions not only evolves but can actually be inverted over time.

Concern about deepening labour market inequality has shifted from the margins to the mainstream of public policy in recent years. In their combined briefing for the G20 Labour Ministers meeting of September 2014 the International Labor Organisation (ILO), OECD and World Bank urged world leaders to confront the problem of inequality (ILO, OECD and World Bank 2014). The connection between wages and productivity was of particular concern: wage growth had lagged productivity improvements for too long (ILO, OECD and World Bank 2014: 1, 6). The three international organisations argued that unless dramatic change occurred, inequality would choke off growth strong enough to reduce

unemployment. This shift is yet to be embraced by political leaders. The Declaration of the G20 Labour and Employment Ministers (2014) issued after consideration of this briefing endorsed many of its specific policy proposals concerning matters like gender discrimination and youth unemployment, but ignored the over-riding problem of inequality.

This distance between international agencies' growing distributional concerns and governments' reluctance to embrace them is significant. Political leaders, it seems, are at best committed to persisting with a narrow 'labour market modernisation' agenda: ameliorating specific 'equity issues' but sticking with the core features of what is essentially a neoliberal-inspired 'labour market flexibility' policy regime. The underlying vision is to help individuals achieve self-reliance through bargaining at workplace and enterprise level. Without a decisive change in direction the current trajectory of economic development based on deepening inequality is likely to deliver more of the same. What will this mean in practice? In particular, to what extent, if any, can 'modernised' labour law redress rising wage inequality?

This article addresses these questions by drawing on the renewed research interest in the role of industrial relations institutions in addressing wage inequality to contribute an analysis of recent Australian developments. Wage inequality has been increasing in many developed countries, including Australia. Comparative research shows that minimum wage setting and collective bargaining procedures play a determining role in moderating or accelerating inequality. (Bosch, Mayhew and Gautie 2010; Hayter and Weinberg 2011; Grimshaw, Bosch and Rubery 2014).

Institutional frameworks vary across countries and across time. Cross-country comparisons show that wage inequality is largest in countries with no or low minimum wages and restricted collective bargaining coverage while wage dispersion is lowest in countries with high collective bargaining coverage. Within countries, institutions may decline over time and be supplanted by new ones. More commonly, institutions adapt (Baccaro and Howell 2011; Streeck and Thelen 2005; Thelen 2014) and may even invert their functions as the underlying political coalitions that create them shift (Thelen 2004). Two countries that illustrate this latter process in the industrial relations arena well are Germany and Australia. Germany's transformation – through the steady decline of collective bargaining and the adoption of a national minimum wage in 2014 – has been well documented (Bosch 2015a; Bosch, Mayhew and Gautie 2010; Grimshaw, Bosch and Rubery 2014; Schulten and Bispinck 2015). The changing interplay of Australia's minimum wage setting mechanisms and collective bargaining institutions and their association with deepening wage inequality has received less attention.

The remainder of this article is structured as follows. First, the evidence of growing wage inequality internationally and in Australia is reviewed. Following that, the relationship between wage inequality and industrial relations institutions is explored. Having established the connection between wage inequality and collective bargaining and minimum wage setting institutions, the article briefly considers different approaches to understanding institutional change. The main part of the article provides a case study of recent Australian experiences of how 'modernisation' of labour standards has coincided with deepening wage inequality despite ostensible continuity of institutional arrangements committed to maintaining equity in the wages system. The paper concludes that if international agencies'

newfound concerns with deepening wage inequality are to be addressed policies involving more than 'neoliberalism with a human face' are needed.

Deepening wage inequality

In examining the level of wage inequality, it is useful to look at both the number of low pay employees and the dispersion of earnings. The OECD defines 'low pay employees' as those who earn less than two-thirds of median hourly earnings. Amongst English-speaking countries Australia has traditionally had one of the lowest levels of such employment (Buchanan, Dymski, et al. 2013a). Figure 1 summarises trends in the proportion of employees falling into this category between 1993 and 2013 for six countries: Australia, Germany, Japan, Korea, the United Kingdom and the United States. As is clear from the figure, while Australia used to differ significantly from the USA and UK it is rapidly approaching these countries' norms of low paid work. Of the countries shown, it has experienced the largest increase (albeit from the lowest base), followed closely by Germany. The OECD series is missing data for France, Denmark and Sweden but other sources (Eurostat 2010; Mason and Salverda 2010) show that wage inequality, based on this measure, is lower than the six countries shown in Figure 1 and has been more stable in these countries over the similar period.

Insert figure 1 approximately here

In most countries, workers at the bottom of the earnings distribution are also drifting further from the middle and the top of the earnings distribution. Figure 2 shows the ratio of the fifth earnings decile (or the median wage) to the first earnings decile for the same six countries as in Figure 1. Again the results show that Australia has the largest increase, with Germany second and Japan, Korea and the United Kingdom actually showing declines in the 5:1 ratios over that period. When the full distribution is considered, however, the results more consistently show an increase in dispersion. In the USA and UK, researchers such as Krugman (2009: 37-56, 124-152) and Atkinson (2007) have noted that a 'great compression' in the distribution of wage related income between 1940s and 1970s has given way to the 'great dispersion' occurring since that time.

Insert figure 2 approximately here

Almost identical regularities are apparent in Australia. In the three decades prior to the mid-1970s earnings inequality, as signified by the ratio of middle to top male income earners, was stable (Leigh 2005: s58-s70 , 2013: 30-45). Since the late 1970s, earnings inequality has risen significantly. Data on the situation from 2002 to 2012 reveals this trend has continued (Fair Work Commission 2013, chart 6.5). Like most other OECD countries deepening inequality has also occurred in the functional distribution of income. After surging in the later 1970s, over the last three decades wages' share of GDP has fallen 10 percentage

points, with the bulk of productivity gains from this period going to business (Buchanan, Dymski, Froud, Johal and Williams 2013a).

Institutions and wage inequality

Wage inequality is an artefact of both market and institutional forces. The interaction between the two is usefully conceived as the forces of labour supply (e.g. skills and education levels) and labour demand (e.g. technology) setting the limits within which institutional forces ultimately determine actual wage outcomes.ⁱ A recent careful and empirically rich analysis of how these factors have interacted to shape wage outcomes in several leading advanced capitalist countries over the last century is provided by Picketty (2014: 304-335). As he puts it: 'Technology and skills set limits within which most wages must be fixed.' (Picketty 2014: 333) Institutions are important for determining the wage levels and rates that actually prevail in a particular country at a particular time (Picketty 2014: 313). As Picketty notes: the main problem with marginalist economic orthodoxy 'is quite simply that it fails to explain the diversity of wage distributions we observe in different countries at different times. ... In order understand the dynamics of wage inequality, we must introduce other factors, such as the institutions and rules that govern the operation of the labour market in each society' (Picketty 2014: 308)ⁱⁱ.

These factors have been the focus of a growing literature on the connections and outcomes of wage determination. Freeman (2008: 20) presents evidence at a very broad level, finding that 'countries that rely on institutions to set wages and working conditions' exhibit a lower dispersion of earnings (as measured by the ratio of the pay of the 9th decile relative to the 1st decile) compared to those which rely more on 'market mechanisms'. In addition to such cross-sectional comparisons, historical evidence demonstrates a similar effect (Machin and Manning 1994; Minns and Rizov 2015).

Bosch (2015a) argues that collective bargaining penetration has a larger effect on (reducing) wage inequality than minimum wages. Using evidence from European Union countries, he shows a strong, negative correlation between bargaining coverage and shares of low-wage employment. Hayter and Weinberg (2011: 141) present similar data (using the 90:10 wage ratio and bargaining coverage) for OECD countries and reach the same conclusion.ⁱⁱⁱ The data in Figure 3 confirms the apparent relationship between collective bargaining coverage, the incidence of low pay workers, and the earnings ratio for low-income earners for the six countries shown in Figures 1 and 2, Sweden, France and Denmark. In the graph, collective bargaining coverage is shown on the x axis, the incidence of low pay workers on the y axis, and the size of the bubbles represents the 5:1 ratio. The figure shows the US, the country with the lowest collective bargaining coverage and the higher incidence of low pay workers, in the top left and Denmark and France, the countries with the highest collective bargaining coverage and the lowest incidence of low pay, diagonally opposite.

Insert Figure 3 approximately here.

Arguments that collective bargaining coverage is more important than a minimum wage assume that the minimum wage is a single rate set below the low-wage threshold and that collective agreements contain multiple rates producing higher pay to reward workers for additional skills, responsibilities and/or discomforts. They also assume that collective bargaining takes place at the industry or sectoral level, and there is some kind of extension mechanism in place. Why is this the case?

Bosch (2015a) uses Sengenberger's (1994) distinction between protective and participative standards to argue that to limit wage inequality the state must do more than provide strong protective standards through directly regulating minimum wages or maximum hours; strong participative standards are necessary to promote bargaining that will establish industry-based pay floors that sit well above the minimum wage (where one exists). Hence, the level of collective bargaining is crucial: 'national or industry-wide collective agreements are significantly more inclusive than company agreements because the standards they set are extended to employees with weak bargaining power, particularly those working in small firms' (Bosch 2015a: 58). Wallerstein (1999), Golden and Londregan (2006) and Hayter and Weinberg (2011) find that the higher the degree of centralisation of bargaining, the lower the wage dispersion. Changes to the bargaining level within countries can also impact on wage inequality, as Kahn (1998) has shown for Norway, Hibbs (1990) for Sweden and Kristal and Cohen (2007) for Israel.

What Bosch, Mayhew and Gautie (2010: 91) term the *inclusiveness* of pay-setting systems (the extent to which the pay of workers with strong bargaining power determines the pay of workers with weaker bargaining power) is also relevant. In their words (2010: 92),

The most inclusive systems use centralized and coordinated national collective bargaining agreements to extend the wage gains of the most powerful, generally unionised, workers to those workers with less bargaining power, especially less-skilled and non-union workers.

In Australia, even though this process historically occurred through the arbitrated award system rather than collective bargaining per se, it nonetheless relied on strong unions in key sectors (particularly engineering, construction and transport) setting labour standards through informal collective agreements that subsequently provided the basis for award standards. This was the quasi-extension mechanism (OECD 2004: 147; Schmitt et al 2008) by which ‘the strong protected the weak’ (Hughes 1973).

Industrial relations systems with procedures to extend collective bargaining outcomes to the non-union sector also exhibit lower wage inequality (Hayter and Weinberg 2011). There are various mechanisms that may sustain inclusive arrangements, depending on the national context: high union density, high employer association membership and/or state support (Bosch, Mayhew and Gautie 2010: 95-99). Whatever the basis of the inclusiveness of pay setting arrangements, maintaining extension provisions, and limiting options for employers to exit such provisions, is crucial to limiting wage dispersion (Bosch, Mayhew and Gautie 2010: 92). Low youth wages (as in the Netherlands), German ‘mini-jobs’, ‘posted’ migrant workers covered by the terms of their origin country, labour hire and temporary employment are examples of exit arrangements.

Grimshaw, Bosch and Rubery (2014) further interrogate the interplay between collective bargaining and minimum wage setting, and its effect on wage inequality. They find four factors are critical to shaping how industrial relations institutions shape wage outcomes:

1. The level of the minimum wage relative to the base rates in collective agreements

2. The degree of social dialogue in minimum wage setting
3. The influence of competing government policy objectives on setting the minimum wage
4. Compliance

In examining the impact of minimum wage changes on earnings up the distribution (the so-called 'ripple effect'), the authors emphasise the central role of union actions to 'defend a wage grid of coefficients indexed to the base rate' (Grimshaw et al 2014: 489). Longer-lasting ripples persist when unions are effective in maintaining such grids relative to the minimum wage. It is one of the reasons why France has maintained lower levels of pay inequity. In contrast, where collective bargaining rules do not maintain a linkage between the minimum wage and higher wage rates, rises in minimum wages can co-exist with rising wage inequality.

Australia's situation is probably closest internationally to Germany, which following the introduction of minimum wages in the last ten years (at the industry level in 2007, then a statutory national minimum wage in 2015) also now exhibits a hybrid system featuring direct state intervention and bargaining (Bosch 2015a: 61). But the participative standards in Australia are much weaker, with a prohibition on industry or pattern bargaining, no extension provisions and other multiple restrictions on unions' activities. In Germany, legislation allows 'minimum wages that can be differentiated by skill levels' but the entire wages grid is not extended to all employees (Bosch 2015b). In Australia, the wages grid embedded in award classification scales are extended to all employees but are much weaker in practice – a matter explored in more detail below.

How institutions change

The growing literature on institutional change, and especially that concerned with institutional plasticity, helps explain why Australia, along with Germany, exhibits growing wage inequality despite ostensibly maintaining robust collective bargaining and minimum wage setting institutions. This literature has emerged in reaction to the varieties of capitalism (VOC) school. The greatest strength of the VOC literature is that it highlights there is not a single path for successful market economies. Its key problem is the assumption of 'path dependence'. As is well known it posits such trajectories take one of two ideal typical forms: so-called 'liberal market' and 'coordinated market' trajectories. These are ensembles of complementary product and factor market arrangements. A growing number of researchers are critical of its assumptions about institutional stability (and especially assumed complementary) amongst arrangements shaping the evolution of product, labour and capital markets. Common to these researchers is a concern with understanding why change is simultaneously untidy but also often coherent in nature. These VOC critics have devoted careful attention to understanding how institutions evolve and mutate to help explain the considerable evidence towards convergence in national economies (Baccaro and Howell 2011; Howell and Givan 2011). This convergence involves more than arriving at 'the one best way' implicit in market and neo-liberal discourse. As noted earlier, within a market society there are ongoing challenges arising from the changing conditions of supply and demand in product and factor markets (Botwinick 1994, Picketty 2014: 310-313). While changes in market prices clearly play a role in guiding necessary adjustments, a host of other adjustment – or more precisely governance - mechanisms exist (Crouch 2005: 101 - 150). In

addition to markets, arrangements arising from the state and civil society also shape the evolution of market societies. These can be combined in a wide variety of ways to achieve change as established arrangements lose their effectiveness in new circumstances.

Thelen (2009: 489) has identified four modes of institutional change:

- *displacement* (when existing institutions are removed, often replaced by new arrangements),
- *layering* (where a new institution is introduced to coexist alongside existing ones),
- *drift* (when sectoral growth occurs outside the reach of existing institutions), and
- *conversion*, which arises when the rules of existing institutions are reinterpreted.

Examples of displacement are rare. In the field of industrial relations the New Zealand *Employment Contracts Act* of the early 1990s, which completely replaced a system of conciliation and arbitration, is a good example. As Hall and Thelen (2009) note, only with displacement (what they refer to as *reform*) is there a transparent re-writing of institutional functions. Institutional change more commonly involves the other three forms. Of particular importance is what Thelen calls *conversion* or others refer to as *plasticity*. For Baccaro and Howell (2011: 525) this involves ‘a mutation on the function and meaning of existing institutions, producing different practices and consequences in new contexts’. As Deeg and Jackson (2006: 157) put it: the research challenge is to understand institutions that ‘may “appear” stable due to persistence of formal institutional differences, but still undergo substantial functional change’. Howell and Givan (2011: 235) identify three ways in which change of this nature can occur: *mutation*, *changing balance between primary and secondary institutions* and *opting out*. *Mutation* involves an established institution taking on

a new role. Also described as *reinterpretation* (Hall and Thelen 2009), it involves a refraction (or in extreme cases inversion) of the function of institutions without any formal changes. A good example is the expansion of the scope of the role of Works Councils in Germany to circumvent the provisions of collective bargaining agreements (Hall and Thelen 2009: 19). Second, the *balance* of influence *between primary and secondary institutions* may change, such that a formerly secondary institution becomes more influential. Third, actors may develop the ability to *opt out* of the regulation created by established institutional arrangements. Hall and Thelen (2009) described this as *defection*. The erosion of collective bargaining coverage is the archetypal example. In Australia all four forms of change have ensured rising wage inequality has coexisted with a modernised labour standards regime purporting to provide institutional continuity concerned with labour market fairness.

Modernising Australian labour standards: The shift from inclusive awards to exclusive enterprise agreements

With roots stretching back to colonial times, the distinctive antipodean institution of arbitrated awards to govern wages and conditions is as old as an independent Australia. The depression of the 1890s hit the Australian colonies hard. As the crisis deepened over the decade employers confronted an increasingly self-confident union movement in the key pastoral, mining and waterfront sectors (Gollan 1960). While business, supported by the state, won the disputes convincingly, the upheavals excited deep political concern. Central to public debates concerning federation and independence from Britain at this time was how the new nation should position itself in the world economy. Those in the export sector, primarily pastoralists, aspired to a regime based on ‘free trade’ in product markets and

‘freedom of contract’ in the labour market (Macintyre 1985: 51-57). Progressive liberal journalists and lawmakers, along with a growing group of employers interested in building local manufacturing – coalesced around a different program: ‘the new protection.’ The key elements of this were the ‘tariff’ to support secondary industry, ‘white Australia’ immigration policy to limit competition in the labour market and compulsory conciliation and arbitration to ‘prevent the rude strike and barbarous lockout’ (Higgins 1922) and ensure the fair distribution of work related earnings.

A new Commonwealth Court of Conciliation and Arbitration was created as one of the first Acts of the new federal parliament in 1904. Its primary goal was more effective prevention and settlement of disputes. As the system evolved, one of its defining practices was to register industrial awards governing the parties or potential parties to a dispute. These could be made either by consent or arbitration. They specified minimum wages and conditions which, in theory, promoted industrial harmony. In settling awards the Court was guided by the common law principle of treating like case alike. This way the notion of ‘fair comparability’ or ‘pattern agreements’ - a defining principle of industrial relations systems the world over - received judicial force in Australia through the doctrine of ‘comparative wage justice’ (DEIR 1984; Hancock and Richardson 2004).

As the system matured the notion of fair pay relativities, as embodied in awards, became central not just to disputes management but to economic management more generally (Isaac and Macintyre 2004: 5). The system was really an amalgam: collective bargaining embedded within a conciliation and arbitration system. Industrial tribunals shaped relations between the parties and codified principles that governed both their conduct and

substantive pay and conditions as fluctuations in growth and struggles over productivity dividends evolved (Hancock and Richardson 2004; Laffer 1962). After the crisis of the 1930s the system became integral to a more advanced liberal collectivist regime of Keynesian inspired macroeconomic management and an expanding welfare state – both conscious products of a comprehensive program of post-war reconstruction (Macintyre 2015: especially 441 – 464). With the onset of full employment a dynamic developed by the late 1960s through to the early 1980s whereby collectively-bargained industry deals in pace-setting sectors would be presented for registration as consent awards. These awards in turn prompted industrial tribunals to realign relativities across the system. In this way the gains of the strong were shared with the weak, resulting in a much more compressed wage structure than other English-speaking countries (Brown et al. 1980). So successful were these wage campaigns that employees' share of GDP increased around 10 percentage points of GDP from the mid-1970s to the early 1980s (Buchanan, Dymski, et al 2013b; Cupper 1976; Yerbury 1980). Moreover the centralised system was also able to accommodate a period of wage restraint during the first half of the 1980s, as part of an Accord brokered by the newly-elected Labor Government to control inflation and unemployment and restore economic growth – problems that emerged as a result of the world economic downturn in the late 1970s and early 1980s.

This incremental institutional evolution did not occur in a vacuum. Over the course of the twentieth century the award system gradually expanded to encompass a range of industries, occupations and issues. Initially the system operated to buttress managerial prerogatives by dealing only with 'industrial matters' narrowly defined (i.e. wages and conditions) for 'industries' characterised as involving only 'manual' occupations. By the

middle of the 1980s all traces of these early confines had disappeared. A series of High Court and peak tribunal decisions ensured that any worker in any sector could be included in the system and any matter potentially connected to work (including anything associated with 'workplace change') was potentially an 'industrial' matter. As a result there was no legal limit to the issues concerning, or realms of, the labour market encompassed in the system (Wright 1995: 183- 209).

It is important to appreciate, however, the informal realities surrounding the system. Implicitly it built around the breadwinner model of employment – i.e. a full time male employee engaged on an ongoing (i.e. 'permanent') basis (Watson et al 2003). Throughout its entire existence higher waged workers, especially professional and managerial employees in the private sector, were often 'award free'. This group constituted about 20 percent of employees even at the apex of system's reach in the mid-1980s. More significantly, the system only imperfectly engaged with the changing nature of work and workers after the 1960s. While the system was one of the best in the world for addressing gender wage discrimination in hourly rates, the great bulk of increased female employment increasingly took the form of part time work in services that was deemed 'casual'. Such workers had (and have) no leave, redundancy or unfair dismissal rights. The collapse of full time youth manual employment and its replacement with part-time service work was also usually deemed 'casual'. As a result 'casual employees' in Australia went from a tiny proportion of the work force in early 1970s to accounting from one work in five from the early 1990s (Watson et al 2003: 67-71).

Upheavals in the world economy provided the initial impetus that ultimately resulted in the rise of the award system in the 1890s. Further (slow burn) economic upheavals from the late 1960s onwards triggered further pressure for change (Brenner 2006, Buchanan and Watson 2001). Initially these were met by changes within the existing framework. Prime among these were various, often quite successful, incomes policies. This dynamic changed in the mid-1980s. Australia's external sector has always been dominated by bulk commodities – agricultural, mineral and energy resources. A glut of these on world markets in the mid-1980s precipitated a crash in Australia's terms of trade. The value of the Australian dollar relative to the US dollar fell by 25 percent in six months in 1985. A response of some kind was needed. The crisis of the 1930s had triggered a deepening of the liberal collectivist settlement, primarily through a comprehensive program of post-war reconstruction (Macintyre 2015). The changes initiated in the 1980s broke with this trajectory. A comprehensive neoliberal program was embraced. Finance was 'deregulated', the dollar floated and tariffs steadily cut – all undertaken to increase 'competitiveness' by increasing 'market disciplines' across the economy (Pusey 1991). No attempt was made to engage with or contain the fragmentation of the workforce and labour standards underway since the 1960s. On the contrary, these policy changes *accommodated* and – most importantly - *entrenched* these problems thereby weakening the capacity of the system to redress fragmentation and the rising wage inequality associated with it.

Following the crisis in the external sector in the mid-1980s the incomes policy partners – unions led by the Australian Council of Trade Unions (ACTU) and the Labor government – proposed a radically modified wages policy to respond to the new economic conditions

(Briggs 2001). In doing so they adopted a tacit alliance with the Business Council of Australia, a new employer association representing large corporations, who wanted to be free of multi-employer bargaining (O'Brien 1994). The new order was codified in the *Industrial Relations Reform Act* of 1993, which ended a system that generalised the gains of collective bargaining through awards. This *Act* defined two distinct streams for setting standards: a bargaining stream and an award safety net. It was assumed that in time most employees would be governed by agreements. New legal rights to strike and to lock out (at enterprise level alone) were granted, as were new unfair dismissal rights for individual employees. In recognition that less than 30 per cent of the private sector workforce was unionised, an option for non-union collective agreements was created. Union and non-union collective agreements could only be registered where it was clear workers were 'not disadvantaged' relative to the relevant award. It was assumed agreements would improve on the award, with the gains justified by more productive work, although this assumption was challenged from the beginning (Hancock and Rawson 1993). Macroeconomic balance was to be achieved by retarding wages growth in the award sector. This marked a profound shift in the notion of fairness at work. Whereas previously awards had worked to spread the gains of the strong to the weak (Hughes 1973), now they were explicitly prohibited from doing so. The core features of this system were maintained by the incoming conservative Coalition government (comprising the Liberal Party and the National Party and led by Prime Minister John Howard), elected in 1996. Its *Workplace Relations Act* of 1996 introduced statutory individual contracts (Australian Workplace Agreements or AWAs), but these too had to pass the 'no disadvantage test'. This *Act* also limited the subject matter of awards and put major constraints on unions' right of entry to the workplace. These matters, making life very difficult for unions, built on the defining features of the 1993 *Act*.

In 2004 the then Federal Government launched the radical *Work Choice*' labour law reforms. *Work Choices* essentially *centralised, shrank* and *tilted* Australian labour law (Briggs 2005; Briggs and Buchanan 2005). *Centralisation* involved increasing the power of the federal minister for labour to directly regulate industrial relations and undermined the discretionary authority of the federal industrial tribunal (Cooper and Ellem 2008: 545). Its arbitral powers were all but eradicated and its capacity to conciliate undermined by the promotion of private mediation and litigation through the general courts. *Shrinking* the reach of labour law involved, inter alia, removing pay scales from awards and specifying only five core labour standards by legislation (Fenwick 2006).^{iv} This meant agreements (both collective and individual) could be settled below award standards (Evenson et al. 2007). The *tilting* of labour law essentially involved removing constraints on management and adding significantly to the constraints on unions. Changes of this nature included allowing employers to unilaterally issue 'greenfield agreements' for new worksites, establishing onerous procedural requirements before industrial action could be taken; and empowering employers to ignore unions completely, even where the majority of workers desired a union negotiated agreement.

Following immense community opposition, the reforms were partially reversed in May 2007, six months before the impending Federal election. Awards were partially restored as a reference point for agreement making. However, the concessions were not enough to prevent defeat for the conservative Liberal/National Coalition government following an intense election period in which the ACTU's 'Your Rights at Work' campaign played a crucial role (Ellem 2013; Wilson and Spies-Butcher 2011). The new Labor Government took office in

November 2007 on a policy that included abolition of AWAs (i.e. statutory individual contracts), restoration of unfair dismissal rights for most employees and restoration of awards, especially protections for financial compensation for working anti-social hours or overtime. The policy retained the primacy of enterprise bargaining and, most significantly, a number of Howard-era changes, including tight restrictions on union campaigning capacity, constraints on award content and prohibitions on pattern bargaining (Rudd and Gillard 2007a). The objective for Labor was not restoring the old order but 'getting the balance right' in the new (Rudd and Gillard 2007b: 2).

The end point: revitalised (but residualised) awards, politicised collective bargaining

The endurance of awards is perhaps the most remarkable feature of the current system but they are no longer the vehicle for spreading wage gains from the strong to the weak. One of the first initiatives of the newly elected Labor administration in 2008 was to direct the then Australian Industrial Relations Commission (AIRC) to rationalise over 6000 different federal and state awards, covering an intersecting array of industries, occupations and enterprises, into 122 modern awards covering broad occupational or industry categories. Modern awards commenced operation on 1 January 2010.

Prior to 1996 awards dealt with an ever-expanding range of work-related issues and provided a framework of inter-linked, quasi-universal labour standards covering most employees. Their content and labour market reach increased as the realm of collective bargaining and industrial disputes expanded. Now the content of modern awards is restricted to 20 allowable matters and they are explicitly framed to support those who are not covered by an enterprise agreement. Whereas agreements struck between employers

and workers used to drive the expansion of award standards, thereby ensuring eventually the gains of the strong flowed through to the weak, now awards provide a 'back stop' preventing agreements undermining labour standards. In addition, there are now exemptions from award coverage: all employees earning more than \$100,000 in 2007 (at that stage around 160 per cent of average weekly earnings), leaving employers free to negotiate around all entitlements that are not directly enshrined in legislation. The Labor government also ensured award modernisation did not expand award coverage into occupations and industries that had historically been award-free (for example, managerial employees and workers in the public relations and real estate industries). These policy decisions perhaps more than any others confirmed that while there is bipartisan support for awards they now operate as residual, not universal, protections.

The main initiative in the *Fair Work Act* to improve parties' access to bargaining concerned a new requirement for all parties to negotiate 'in good faith'. The onset of enterprise bargaining in 1993 had removed tribunals' power to compulsorily settle disputes by arbitration. This enabled militant employers in strong bargaining positions to ignore union efforts to negotiate agreements, even when they enjoyed majority support at a workplace. The new requirement to 'bargain in good faith' was designed to overcome this outcome by requiring each party to share information and respond to claims put to it. It has not led to an expansion in collective bargaining coverage, largely because these provisions are built around procedural steps instead of any consideration of content (Dorsett and Lafferty 2010). As long as employers comply with purely procedural requirements there is no obligation to reach agreement. Moreover, the Labor Government continued to provide a

supportive framework for non-union collective agreements, honouring its commitment to the principle: a 'union does not have an automatic right to be involved in collective enterprise bargaining' (Rudd and Gillard 2007b: 13). Compared to the *Work Choices* regime unions do have some more collective bargaining rights but their role remains very circumscribed (Forsyth 2009).

The other *Fair Work Act* initiative directed at improving equity was a provision permitting multi-employer bargaining for 'low paid' workers. Like the good faith provisions, this 'low pay bargaining stream' is supported by purely procedural rights that have had, to date, little substantive impact (Naughton 2011). New standards have been established, although not through industrial processes but primarily with political mobilisation. At a national level, three significant sectoral level industrial campaigns have occurred since 2007: a pay equity case leading to higher wages for the predominantly female social and community services workforce; the introduction of quality standards for the early childhood education and care workforce; and a new tribunal to address safety and remuneration concerns for truck drivers in the road freight transport industry (since abolished). The success of the campaigns, led by the Australian Services Union, United Voice, and the Transport Workers Union respectively, all hinged on being able to mobilise public opinion to achieve government support for the change, rather than the traditional strategy of petitioning a claim directly in the industrial tribunal.

The success of campaigns such as these depends on creating new bonds of solidarity between workers and clients or customers, and between workers and the general public (Buchanan, Oliver and Briggs 2014). But these bonds are tenuous and require constant

political mobilisation with all the risks that this entails. This is in striking contrast to the labour standards regime that operated up until the early 1990s, when union recognition was axiomatic: conciliation and arbitration required unions for effective operation (Smith 1975). Union recognition is now, as a matter of substance, highly contingent. Where employers are opposed to unions, as long as they comply with requirements to 'bargain in good faith' they can stonewall union initiatives. Under these conditions unions have been forced in a number of instances into constant struggle to win effective recognition and the struggles are more frequently politicised with very publicly visible 'winners' and 'losers'. Consequently, although the elements of the old conciliation and arbitration system remain as a matter of form – awards, unions, tribunals and employers – they are now arrayed very differently.

Discussion: Institutional plasticity entrenching (not redressing) deepening inequality

All four modes of institutional change as identified by Thelen (2009: 489) have been at work in the modernisation of Australia's labour standards – although to very differing degrees and rarely in isolation.

Prima facie the least effective mode has been *displacement* (or what Hall and Thelen (2009) refer to as *reform*). This was most conspicuously attempted with the *Work Choices* initiatives of 2004 and 2007. This generated considerable political controversy (to the point of precipitating a change of Federal Government). While formally abandoned, profound institutional change of the type envisaged by the legislation had preceded it and continued after its repeal.

More enduring change has been achieved by *layering* and *drift* that has been consolidated by dynamics of *plasticity* (or what Thelen calls *conversion*). Arguably the most enduring, explicitly formulated change has involved *institutional layering* associated with enterprise bargaining (Thelen 2009: 489). Indeed, it can be understood as multiple *institutional layering*, since the introduction of enterprise bargaining was followed by statutory individual agreement forms (beginning with AWAs in 1996 and various iterations since). In one sense the impact of institutional layering was limited because, apart from a brief period under *Work Choices*, awards remained the reference point for determining whether an agreement was fair or reasonable (or ‘not disadvantageous’) for employees. From an international perspective, however, the privileging of this level of bargaining is what marks the Australian changes as instructive for future trends in wage inequality (Bosch 2015a; Hayter and Weinberg 2011). Enterprise bargaining delivers wage increases for employees covered by agreements (and probably reduces wage dispersion for these employees) but, as in the US, has no impact on wage dispersion in the non-collective bargaining sector. *Fair Work Act* era changes, particularly the low-pay bargaining stream (a rare exemption to the prohibition on multi-employer bargaining) are unlikely to change this because by design they are isolated from those sectors with sufficient union power to produce strong bargaining outcomes.

Just as, if not more significant, than *layering* has been the long term problem of *institutional drift*. The key development here has been the erosion of award coverage – especially the declining reach of full award entitlements to growing numbers of workers since the late 1970s. For the last three decades there has been both a sort of *defection by default* (Hall and Thelen 2009) as well as *institutional drift* (Thelen 2009) supported by the dynamics of

reinterpretation. The defection by default arose through the growth of occupational categories (particularly managerial and professional occupations) that were new or which had never been within award coverage. The ability to easily sidestep key parts of the award system suited service sector employers, whose particular demands for more flexible labour and more general skills were not well matched to how the award system and other associated institutions (such as traditional apprenticeships) defined and protected labour standards (Thelen 2014: 26). The *reinterpretation* arose through the explosion in casual employment, which while intended to apply only to cases where the work was irregular or sporadic became a widely-used loophole for employers seeking to avoid a range of entitlements and obligations owed to permanent full-time and part-time workers (Watson et al 2003: Chapter 3). Consequently, the award system became less relevant to large proportions of the top and bottom of the wage earning distribution. Both developments arose because of changes in the underlying labour market, which accelerated as Australia transitioned to a more open economy. Neither of these developments were caused by any change in the structure or purpose of the award system or Australia's industrial relations institutions in general, although the failure of the award system to respond is itself telling. There are echoes here of the struggle to maintain Germany's collective bargaining system (Bosch 2015b) and to maintain social solidarity in the Swedish model (Thelen 2014).

While *layering* and *drift* have been important, arguably the most significant aspect of institutional change has been the *plasticity* of the award system itself with the role it now plays being profoundly *converted* in a host of subtle ways. On the surface, the *Fair Work Act* entrenched and revitalised the award system as the cornerstone of labour market

regulation. Yet the continued resilience of the award system is not evidence that Australia has halted the drift to liberalisation. Following Baccaro and Howell (2011), the award system meant that Australia began its journey of labour market liberalisation from a different starting point to other jurisdictions. Previously awards contributed to a more equal distribution of incomes than was the case in other comparable Anglo liberal economies, and this persisted for longer. This contrast holds even for some European countries with stronger collective bargaining systems. For example, provisions in Germany (in the Collective Bargaining Act and the Posted Workers Act) permit the extension of wage rates to workplaces beyond those covered by the original agreement but, prior to reforms in 2014, use of the provisions had been in decline and they were prominent only in construction and some other industries (Schulten and Bispinck 2015: 248). Moreover, the German extension provisions apply only minimum rates (for skilled and unskilled workers), not the full wage grid from collective agreements (Grimshaw, Bosch and Rubery 2014: 482), whereas modern awards retain multiple classifications and wage points. However the substantive role of awards in shaping pay outcomes has *mutated* through a range of reinterpretations, including through lower percentage award wage rate increases for trade- and university qualified workers in comparison to minimum wage earners, resulting in a compression of award wage rate relativities (Healy 2011; Buchanan, Oliver and Briggs 2014: 3-2); the lack of objective criteria (such as qualifications) in classification definitions (Oliver and Walpole 2015); and the resulting tendency of employers to place employees on the lowest possible classification (Wright and Buchanan 2013: 67). As a result award wage rates have become less meaningful as an instrument of comparative wage justice (Buchanan, Bretherton, et al 2013). This situation contrasts most markedly with France where, in spite of low union density, high collective bargaining coverage means that

minimum wage rates are reproduced in the entire collective bargaining wage grid such that relativities are maintained over time (Grimshaw, Bosch and Rubery 2014).

In addition to *mutation*, further changes have been promoted with the expansion of *opting out* provisions. The current conservative government is undertaking a number of minor changes that will retain the *Fair Work* architecture while allowing employers to erode award standards relating to hours, overtime and penalty rate provisions by making it easier to settle 'Individual flexibility agreements' (a device already within Labor's *Fair Work Act*) that undercut the relevant award or collective agreement (Buchanan and Oliver 2013). The cumulative impact of all the above has been to change the relevance and reach of awards. Previously they could legitimately have been regarded as extensions of collective agreements. This is no longer the case. The current state of awards means that their standards have continued to erode over time. Increasingly, award-covered workers are coming to resemble what other countries call 'minimum wage' workers rather than those covered by collective bargaining agreements. Because most award rates (other than the very lowest classifications) have not kept pace with inflation, continuing wage compression in awards will have flow on consequences to collective bargaining outcomes in low-wage, low union density sectors such as retail. Recent survey evidence (Wright and Buchanan 2013) suggests for example that (compressed) pay relativities in awards covering low wage workers are replicated in collective agreements in award-reliant sectors such as grocery retailing (Buchanan, Bretherton, et al. 2013:69 - 81). In short these are best seen as 'award reliant agreements' – not agreements that set new wage standards. This is a complete inversion of the earlier industrial order where agreements used to set (rising) wage standards that then prevailed in awards.

Conclusion

Amid a growing interest in wage inequality, the transformation of the Australian award system of wage determination and the introduction of firm-level enterprise bargaining illustrates the importance of better understanding the role played by changes in wage-setting institutions on wage outcomes. Since Australia adopted formal enterprise bargaining in 1993, it has experienced among the largest growth in wage inequality internationally. Establishing a causal relationship is difficult but the Australian experience analysed in this article is consistent with extant comparative research demonstrating that lowering the level of bargaining is associated with an increase in wage inequality.

These changes are not solely the outcome of changes in wage determination. The ‘great compression’ from the 1940s to the mid-1970s was a legacy of the ‘new protection’ settlement augmented by a comprehensive program of post-second world war reconstruction. The approach to wage determination in this regime – one which helped ensure the gains of the strong were shared with the weak – worked well nested within such a liberal collectivist settlement. The key elements of that settlement have long been displaced. Where Australia’s new ‘modernised’ wage determination arrangements are important is in what they tacitly support and actively prevent. The current policy approach of severing links between the strong and the weak simply does not engage with problems of labour market fragmentation that have been gradually intensifying since the 1960s. On the contrary, they entrench it by limiting the capacity of agents like unions and agencies like the Fair Work Commission to doing anything systemic to redress them.

The Australian example provides additional evidence of the impact and durability of different modes of institutional change. Four different modes of such change have been considered. Reform directed at explicitly displacing the older order has been the least effective mode. This does not mean that what *Work Choices* aspired to achieve has not come to pass. Both *drift* and *layering* have contributed to supporting growing wage dispersion, but have left in place the core of the old system, even if it now operates on a residualised and not inclusive basis. *Conversion* (especially *reinterpretation* or *mutation* of awards and agreements), on the other hand, has been more intrusive. As a result the relationship between awards and agreements has been inverted. Previously the system transmitted the gains of collective agreements of the strong to the weak through awards. Now awards work to define how low agreements can go. Allied labour laws severely constrain the ability of either agreements or awards to engage with new issues or new classes of work and workers as they emerge.

It is important that we absorb these lessons as interest in wage inequality rises in places like the OECD, World Bank and IMF. Neoliberalism with a human face is part of the problem, not part of the solution. Effective responses to the problem of deepening wage inequality need more effective specification of objectives, understanding of the issues and new institutional capabilities. Ironically, survivals of the old liberal collectivist order provide a better foundation for this than anything left by the neoliberal turn in policy. But legacy foundations are limited in what they offer. The challenge is not to go back to some mythical 'golden age'. Instead dramatic reconstruction and capacity building are needed within the state and beyond (e.g. Buchanan, Dymski, et al. 2013b and Schmid 2014) if fair work is become the

substantive – and not merely discursive - hall mark of the Australian labour market in the future.

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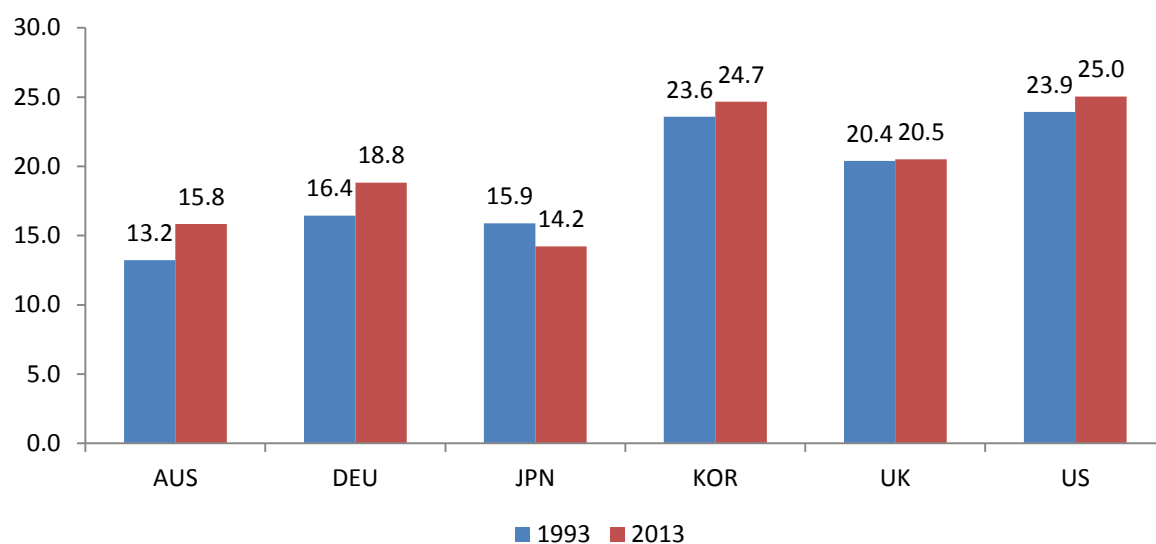
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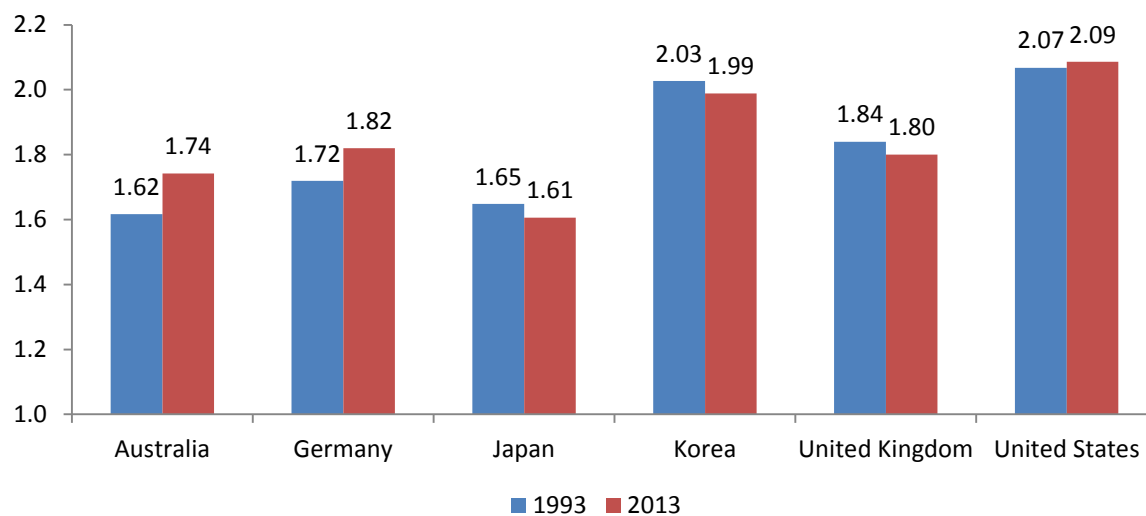
FIGURES AND TABLES

Figure 1: Proportion of workers who are low-wage (less than two thirds of median income), 1993-2013



Source: OECD (2016) Wage levels (indicator). doi: 10.1787/0a1c27bc-en (Accessed on 29 February 2016)

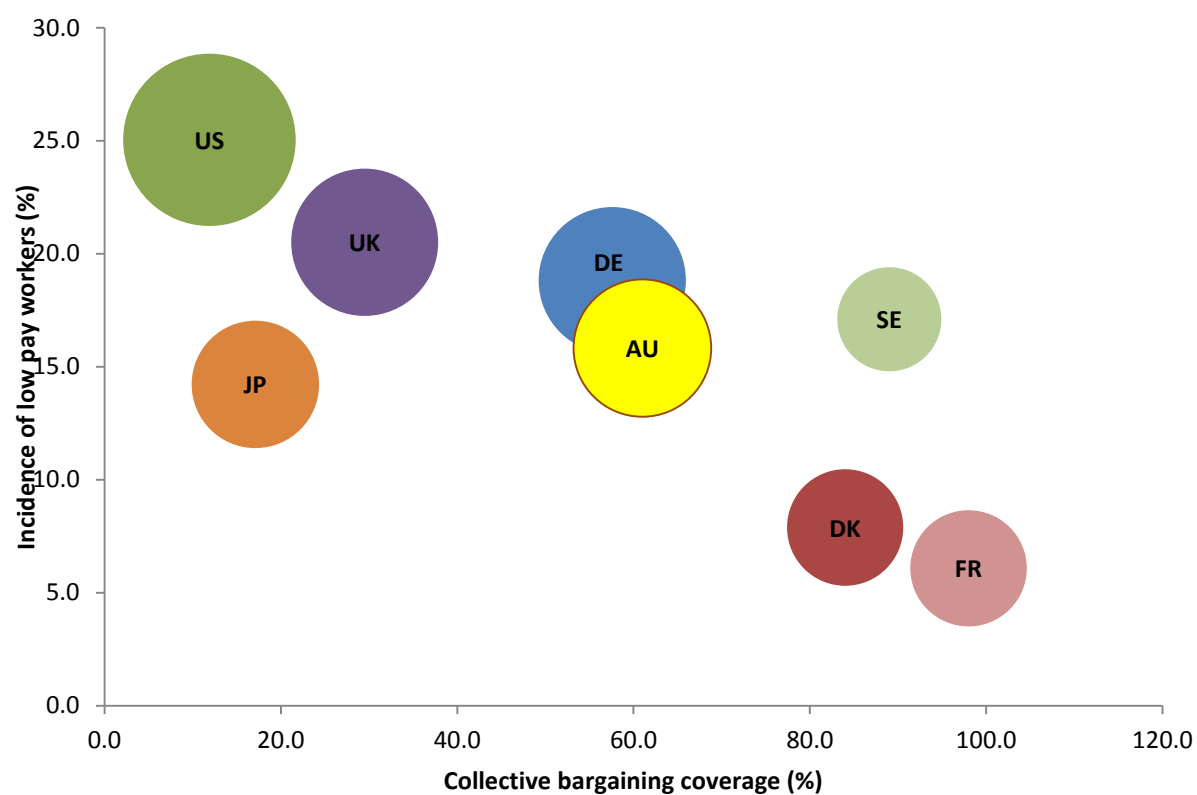
Figure 2: Ratio of 5th decile to 1st earnings decile, 1993-2013



Source: OECD (2016) Wage levels (indicator). doi: 10.1787/0a1c27bc-en (Accessed on 29 February 2016)

Figure 3: Incidence of low pay workers and 50/10 ratio by collective bargaining coverage,

2013



Sources: OECD (2016), ILO (2016), Eurostat (2013).

Note: Size of bubble reflects ratio of 5/1 earnings deciles. Graph excludes Korea due to substantial overlap with US. Notes to Table 1 also applicable.

Endnotes

ⁱ Particularly rigorous formulations of the dynamics involved here are provided in Botwinick (1994) and Marsden (1987).

ⁱⁱ Picketty's analysis is not crafted on a rhetorical rejection of the 'first year text book' version of orthodox marginalism. In addition to Picketty (2014: especially 310-313), see Picketty (2015), his response to Acemoglu and Robinson (2015).

ⁱⁱⁱ However DiNardo, Fortin and Lemieux (1996) found changes in the US minimum wage to account for a larger share of the change in wage dispersion than a change in unionisation.

^{iv} These were: respecting the relevant hourly rate of pay derived from the relevant award; a standard working week of 38 hours, but people could work longer if they so chose (but with no obligation for additional compensation for over time or anti social hours of work); up to 12 months unpaid parental leave; 10 days sick leave/carers leave a year (but which could be cashed out); and four weeks annual leave (two weeks of which could be cashed out).